IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 67 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAILENDRABHAI MOTILAL MEHTA

Versus

KRISHNABEN VRAJLAL MEHTA

Appearance:

MR VIJAY H PATEL for Petitioners

MR JR DAVE for Respondent No. 1

Mr.M.A.BUKHARI, A.P.P. for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/09/2000

ORAL JUDGEMENT

1. The order dated 22.1.1997 passed by the 4th Joint Civil Judge (JD), Ahmedabad (Rural) is under challenge in this Revision. Through the impugned order the learned

Joint Civil Judge JD) issued a general search warrant under Section 93 of the Code of Criminal Procedure, which was directed against the respondent No.1.

2. The respondent No.1 has not appeared nor his counsel has appeared though the list was revised four times. As such Shri V.H.Patel, learned Counsel for the revisionist and Shri M.A.Bukhari, learned A.P.P., representing the respondent No.2, have been heard.

3. After hearing the learned Counsel for the revisionist and the learned A.P.P., I have no hesitation in my mind in observing that the learned Joint Civil Judge (JD) has committed grave illegality and patent jurisdictional error in passing the impugned order. In the impugned order it is not mentioned whether general search warrant u/s.93 Cr.P.C. was issued for enabiling the officer to decide any criminal case pending before him. Annexure : A is the application styled as Criminal Miscellaneous Application No.10 of 1997 which was moved by the revisionist No.1 before the Chief Judicial Magistrate, Ahmedabad (Rural). Even in this Application it was not mentioned whether this was an independent application or it was moved in some criminal inquiry, investigation or trial pending before the Chief Judicial Magistrate. It is also not clear from the impugned order as to how the disposal of this Criminal Miscellaneous Application was entrusted to the Joint Civil Judge (JD). However, perusal of Ground (B) in the Memo of Revision indicates that some proceeding u/s.125 Cr.P.C. was pending. Admittedly the revisionist No.1 is wife of the respondent No.1 who is living seperately on the allegation of cruelty, physical as well as mental, practiced by the respondent No.1. It seems that because of this seperate living on account of cruel treatment meted to the revisionist No.1 by the respondent No.1 that proceedings u/s.125 Cr.P.C. were initiated by the revisionist No.1. The question is whether in such proceedings general search warrant could be issued by the deligate of the Chief Judicial Magistrate.

4. Section 93 of the Code of Criminal Procedure provides in sub-clause (1) that "where any court has reason to believe that a person to whom a summons or order under Section 91 or a reequisition under sub-section (1) of Section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, inter-alia may issue a search warrant and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter

contained." It is thus clear from plain reading of Section 93(1)(a) Cr.P.C. that when the Court has reasons to believe that a person to whom a summons or order u/s.91 has been or might be addressed will not or would not produce documents or things as required by such summons may issue search warrant. Thus the pre-requisite for exercise of power u/s.93 is that the Magistrate should have reasons to believe that a person to whom summons u/s.91 Cr.P.C. has been issued or might be issued will not produce document or things required from him then only search warrant under this section can be issued.

5. Section 91 provides with powers for summoning and production of documents or other things. Sub-Section 1 of Section 91 provides that whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

6. A joint reading of Sections 91 and 93 Cr.P.C. clearly indicates that if the Court considers that production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry or trial or other proceedings it may issue summons to person in whose custody or possession such document or thing is expected to be and requiring him to produce such document or thing before the Court either by appearing in person or to produce it at the time and place stated in the summons. There is no whisper in the impugned order that it was necessary for the Magistrate or for the officer who passed the impugned order that production of Stridhan property was necessary for disposal of application u/s.125 Cr.P.C. Shri M.A.Bukhari, learned A.P.P. has referred the case of V.S.KUTTAN PILLARI v/s. RAMAKRISHNAN & ANOTHER, reported in AIR 1980 SC 185, and argued that the Magistrate was required to give some reasons before passing an order of issue of search warrant u/s. 93(1)(c) Cr.P.C. and since reasons have been stated in the impugned order the order is in accordance with law. I am unable to accept this contention for the obvious reason that the so-called reasons assigned by the learned Civil Judge (JD) are no reasons in the eyes of law. In the first place he has placed reliance upon the Apex Court's verdict in the case

of PRATIBHA RANI v/s. SURAJ KUMAR & ANR., reported in III-1985(1) Crimes 614. I am at a loss to find out that in this case the Apex Court has not laid down any ratio nor is there any obiter from the Apex Court regarding Section 93(1)(c) Cr.P.C. On the other hand it was a case where the High Court had quashed the complaint and the proceedings arising out of complaint in exercise of jurisdiction u/s. 482 Cr.P.C. The complaint was filed u/s. 405 and 406 I.P.C. No doubt in this case allegation by the complainant, namely, the wife was that the Strithan property was misappropriated and criminal breach of trust was committed by the husband and the inlaws of the complainant yet no prayer was made for issue of search warrant. On such allegations the complaint was filed by the wife. The complaint of the wife was quashed by the High Court. The Apex Court on examining the prima facie allegations in the compliant found that even the husband can commit criminal breach of trust of Stridhan property given in his custody as trustee for his wife. Nothing has been stated by the Apex Court nor held by the Apex Court that general search warrant could be issued in exercise of powers u/s. 93(1)(c) Cr.P.C. Consequently this reason given by the learned Magistrate that this case of the Apex Court fully applies to the facts of the case is no reason rather ill-conceived reason given by the learned Magistrate.

7. So far as the case of V.S.Kuttan (Supra) referred by Shri M.A.Bukhari is concerned, here the Apex Court has laid down very clearly that issuance of search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. Issue of search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed his discretion in favour of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting the search warrant." In this case the facts were that the office bearers of a public institution were to be proceeded for criminal breach of trust. General serach warrant was issued against the office bearers of the Trust and it was to be executed at the place of public institution for the obvious reason that the entire documents, books of accounts of the institution were not in possession of the office bearers, but were kept in the premises of the institution. As such on these facts general search warrant against the premises of the institution was held justified.

8. In the case before me, as stated earlier, no

summons was issued u/s.91 Cr.P.C. nor it was intended to be issued, nor it could be issued because for disposing of an application u/s.125 Cr.P.C. search warrant was hardly required to be issued inasmuch as Stridhan property of the respondent No.1 was not at all necessary for disposal of such application u/s.125 Cr.P.C. All that is required to be considered is whether the husband having sufficient means neglected or refused to maintain his wife, unable to maintain herself and if so the Magistrate may grant such maintenance to the wife not exceeding Rs.500/- per month. There is no whisper in Section 125 Cr.P.C. that Stridhan property of the wife in possession of her husband or inlaws is required to be considered as means for maintenance of the wife. On the other hand such search warrant could have gone against the wife in an application u/s.125 Cr.P.C.

9. Learned Court below has thus not applied its mind to the basic requirement whether any summons was issued to the revisionist u/s.91 Cr.P.C. and whether any such summons was required to be issued. If this was the position then the search warrant u/s.93 could not be issued.

10. From the stand of the revisionist it is further clear that he was not unwilling to produce the Stridhan property. On the other hand the stand of the revisionist was that certain stridhan property was in his possession which he is ready to produce before the Court or to place in custody of the court. Of course he disputed that other items in the list given by the respondent were not stridhan property nor were received by her as Stridhan property. Consequently it was not a case where the Court below should have come to conclusion that the revisionist would not produce stridhan property.

11. Shri M.A.Bukhari, contended that since it was required to be decided what items constitute stridhan property the learned lower Court was justified in issuing search warrant. In my opinion such contention also cannot be accepted. In my opinion such disputed question of facts could not be decided in exercise of powers u/s.93 Cr.P.C. or while dealing with Application u/s.125 Cr.P.C.

12. For the reasons given above I am of the view that the impugned order is patently illegal and suffers from excessive exercise of jurisdiction, non-application of mind and is specimen of order for which no reasons have been given as has been observed by the Apex Court in the case of V.S.Kuttan (supra).

The revision, therefore, succeeds and is hereby allowed. The impugned order is set aside.

sd/-

Date : September 26, 2000 (D. C. Srivastava, J.)

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